



# Equality and Diversity in Employment Policy

## Fordham All Saints

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November 2017

# **Education HR Service**

## **Equality and Diversity in Employment Policy**

**A model for Schools & Academies**

**Changes to the policy – February 2017**

**Please note that there is a paragraph on page 4 that only applies to schools with a religious character which should be deleted if not applicable.**

- Updating terminology eg Governing board to Governing Board
- Updated in line with legislative changes
- The main change is in presentation. The document has been re-ordered and separated into a shorter document setting out the policy elements, supported by guidance and supplementary information set out in appendices.

Section	Change details
1	Reference to Public Sector Duty
1	Paragraph for schools with a religious character
2	Reference to British values
2	Reference to providing all applicants for jobs with an equality statement (n.b. a model statement is in the model Recruitment Policy)
3	Reference to Policy Equality and Workload Assessments
3	Definition of 'Employee' in the context of this policy
3	Reference to Public Sector Equality Duty

## Equality and Diversity in Employment Policy

This Model Policy was released in:	February 2017
School Staff were consulted on this document and it was accepted by the Personnel committee on :	November 2017
It was ratified by the Governing board on:	November 2017

### A model for Schools and Academies

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## 1. Objective

The purpose of this policy is to set out the school's commitment to equal opportunities in employment and to avoiding unlawful discrimination in all aspects of employment including

recruitment, promotion, opportunities for training, pay and benefits, discipline and dismissal, performance and selection for redundancy.

This includes upholding its obligations under the Equality Act 2010 (“the Act”) not to discriminate directly or indirectly in any of its activities against employees or applicants for employment on the grounds of the protected characteristics.

- Age
- Disability
- Gender re-assignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race (which includes ethnic origin, colour, nationality and ethnic or national origins)
- Religion or belief
- Sex
- Sexual orientation

It further includes fulfilling its Public Sector Equality Duty, in carrying out its functions, to have due regard to the need to:

- Eliminate discrimination and other conduct that is prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it.
- Foster good relations across all characteristics, between people who share a protected characteristic and people who do not share it.

Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Definitions of terminology are at Appendix A. Further information about protected characteristics can be found at Appendix C.

This Policy complements the general equalities policies and procedures within the school which set out the school’s commitments and obligations to the wider school community.

**Schools with a religious character** *[Delete this paragraph and Appendix E if not applicable]*

As a school with religious character, certain exceptions can be applied in respect of appointments, remuneration, promotion and dismissal related to the religious tenets of the school. These are set out in Appendix E.

## 2. Policy Statement

The Governing Board is committed to:

- Promoting equality of opportunity and community cohesion where the diversity of different backgrounds and circumstances is appreciated and positively valued.
- Promoting the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance for those with different faiths and beliefs.

We expect all staff, volunteers and other workers to share this commitment. It is recognised that this can only be achieved through sound procedures, good inter-agency co-operation and the recruitment and retention of competent, motivated employees who are suited to, and fulfilled in the roles they undertake.

The Governing Board recognises the value of, and seeks to achieve a diverse workforce which includes people from different backgrounds, with different skills and abilities. We are committed to ensuring that recruitment and selection is conducted in a manner that is systematic, efficient, and effective and which promotes equality of opportunity. Selection will be on the basis of merit and ability, assessed against the qualifications, skills and competencies required to do the job. We will uphold obligations under law and national collective agreements to not discriminate against applicants for employment on the grounds of age, sex, sexual orientation, marital status, disability, race, colour, nationality, ethnic origin, religion or belief.

An equality statement will be provided to all applicants for jobs. The school may, where appropriate, apply positive action to encourage applications from particular groups where they are underrepresented in the workplace. In exceptional legitimate circumstances the school may apply a genuine occupational qualification to particular role (see Appendix A).

The school:

- Will take positive steps to create a culture through its governing board, managers and other employees, workers and volunteers, in which everyone can feel confident of being treated with fairness, dignity and respect.
- Aims to create a work environment in which all individuals are able to give their best; where all decisions are based on merit and which is free of harassment, victimisation and bullying.
- Will provide appropriate training and support to employees to secure understanding of, and compliance with, its aim and expectations.
- Will ensure that equality issues are considered and regularly reviewed, including assessing implications for people with particular protected characteristics as an integral part of our policy development and decision making processes.

Behaviour or actions by members of staff against the spirit and/or the letter of the law or this policy, including but not limited to acts of discrimination, bullying or victimisation against employees or others in the school community will be considered disciplinary matters and will be dealt with under the school's Discipline and Dismissal Procedure and may, in some cases, lead to dismissal.

### 3. Policy in practice

The school has in place a range of employment related policies, procedures and practices which support and complement this Equality and Diversity in Employment Policy. These will be operated in a way which is consistent with the objectives of this Policy and Equality and Workload Impact Assessments on policies and procedures support this objective.

For the purposes of this Policy and the Act, the definition of 'employee' is extended to include:

- employees (those with a contract of employment);
- workers and agency workers (those with a contract to do work or provide services);
- self-employed people (where they have to personally perform the work).

The principles of this Policy also apply to Volunteers.

### 4. Responsibilities

It is recognised that everyone in the school community influences how equality and diversity is achieved and everyone has a responsibility to uphold the law and principles of equality of opportunity. In addition to these general responsibilities, there are other specific responsibilities.

#### 4.1 The Governing Board has responsibility for:

- Determining, monitoring, reviewing and supporting the implementation of the Equality and Diversity in Employment Policy in consultation with relevant stakeholders.
- Ensuring employment and recruitment policies and practice are non-discriminatory in word and operation.
- Analysing and monitoring policy and practice and initiating appropriate action.
- Ensuring complaints are investigated and dealt with effectively.
- Ensuring appropriate training takes place for governors and employees.

#### 4.2 The headteacher and other managers have responsibility for:

- Ensuring that the Equality and Diversity in Employment Policy is implemented.
- Ensuring recruitment, employment and management policies and practices are undertaken in accordance with the Policy.
- Ensuring the Policy is brought to the attention of all employees and that they all receive appropriate training.
- Treating all employees with dignity and respect and recognising and valuing individual skills and contributions.
- Creating an environment in which employees are able to identify and share good practice, celebrate success and encourage positive attitudes towards diversity.
- Dealing appropriately with breaches of this policy.
- Ensuring a member of the senior management team is the nominated lead on equality and diversity issues.

#### 4.3 All employees, volunteers and workers have a responsibility to:

- Act within equalities legislation and to comply with school Policy.
- Treat everyone with dignity and respect and recognising and valuing individual skills and contributions.
- Take part in training and comply with measures introduced to ensure equal opportunities and non-discrimination.

- Report to their line manager, or other appropriate person, any breaches of this policy enacted against him/her or another person by another employee, pupil or another person connected with the business of the school.

Individuals can be held personally liable as well as, or instead of, the school for any act of unlawful discrimination. Individuals who commit serious acts of harassment may be guilty of a criminal offence. Where an act of harassment is alleged, the school will thoroughly investigate the alleged circumstances and provide additional training/support to individuals as considered appropriate.

## **5. Monitoring and reporting**

The school will periodically monitor the application of its policies and procedures and their impact on staff and applicants to assess their effectiveness and revise them as necessary. The school is committed to engaging with relevant stakeholders in the review of policy and practice.

In particular, the school will monitor matters such as recruitment, promotion, training, pay, grievances, disciplinary action, leave of absence, flexible working, management of sickness absence and redundancy by reference to the protected characteristics of their employees. The school will consider and implement any appropriate action to address any issues that may be identified as a result of the monitoring process.

Information provided by job applicants and employees for monitoring purposes will be used only for these purposes. The school will publish such equality data as is required in accordance with the Equality Act and the Public Sector Equality Duty.

All data will be collected, held and processed in accordance with the Data Protection Act 1998 (as amended). Any publication of data will preserve anonymity.

## **6. Complaints**

The school will make every effort to protect employees from discrimination and all concerns raised with the school will be handled in a positive and sensitive manner and in accordance with the appropriate policy/procedure.

### Employees

Existing employees who feel they have been unfairly discriminated against, harassed, bullied or victimised should raise it in the first instance with their line manager or other manager where their own line manager is the subject of the complaint.

Employees should refer to the grievance procedure for further information. Employees will not be penalised for raising a grievance, even if the grievance is not upheld, unless their complaint is found to be both untrue and made in bad faith.

### Applicants

Individuals who may be concerned that their application for employment has not been dealt with in accordance with this Policy should raise their concerns via the school complaints procedure.

### Others

Visitors or other members of the school community who experience or witness discrimination, bullying, harassment or victimisation should report the matter to the headteacher in the first instance or via the school complaints procedure.



# Appendix A

## Definitions

### 1. Direct discrimination

- 1.1** Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic.

Direct discrimination could involve a decision not to employ someone, to dismiss them, withhold promotion or training, offer poorer terms and conditions or deny contractual benefits because of a protected characteristic.

Example: Not employing a woman because she is pregnant.

### 1.2 Discrimination by Perception

Discrimination by Perception is where an individual is directly discriminated against or harassed based on a perception that he/she has a particular protected characteristic when he/she does not, in fact, have that protected characteristic. Discrimination by perception does not apply, in law to marriage and civil partnership or pregnancy and maternity.

Example: A heterosexual employee is taunted about his sexuality by colleagues who perceive him to be gay.

### 1.3 Discrimination by Association

Discrimination by Association is discrimination against a person because they have an association with someone with a particular protected characteristic. Discrimination by Association applies to race, religion or belief, sexual orientation, age, disability, gender reassignment and sex.

Example: Not offering a job to the parent of a disabled child because the employer thinks they will need more time off due to the child's disability and there is no evidence to support this.

## 2. Indirect discrimination

Indirect discrimination is where a provision, criteria, policy or practice in the school is applied to everyone but particularly disadvantages people who share a protected characteristic compared with people who do not. Indirect discrimination can be justified if the school can show it acted reasonably, for example that it is a 'proportionate means of achieving a legitimate aim' (see 2.1).

Indirect discrimination applies to age, race, religion or belief, sex, sexual orientation, marriage and civil partnership, disability discrimination and gender reassignment. Pregnancy and maternity are covered by indirect sex discrimination.

Example: Having a policy not to employ anyone with facial hair in a kitchen for health and safety reasons. This policy may indirectly discriminate against certain religious groups.

### 2.1 Proportionate means of meeting a legitimate aim

There are limited circumstances where an employer may act in a way which is

discriminatory, but where it can objectively justify discrimination as 'a proportionate means of achieving a legitimate aim'.

In attempting to demonstrate a proportionate means of achieving a legitimate aim, an employer must show that:

- there is a legitimate aim such as a good business reason, but employers should note that cost alone is unlikely to be considered sufficient; and
- the actions are proportionate, appropriate and necessary.

The process of determining whether discrimination is justified involves weighing up the employer's need against the discriminatory effect on the employee/group of employees with the protected characteristic.

A legitimate aim might be any lawful decision made in order to run the school effectively, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that the school has looked at less discriminatory alternatives to any decision it has made.

Example: The long term aim of reducing inequality between the pay of men and women is always to be regarded as a legitimate aim. Short term pay protection schemes introduced with the aim of removing long-term inequalities in pay may therefore be capable of being objectively justified.

### **3. Positive Action**

Positive action describes measures targeted at a particular group that are intended to redress past discrimination or to offset the disadvantages arising from existing attitudes, behaviours and structures. The school may use lawful measures which can include:

- Encouraging applications from people of particular racial groups or gender, who have been under-represented in certain occupations or grades during the previous 12 months.
- Providing facilities to meet any specific educational, training, or welfare needs identified for a specific racial group.
- Measures to provide training and special encouragement for returnees to the school after a period of time discharging domestic or family responsibilities.

Positive action is different from positive discrimination which is illegal. Positive discrimination generally means choosing (or not choosing) someone solely on the grounds of a protected characteristic (eg gender or racial group) and not on their abilities.

### **4. Genuine Occupational Requirements**

Employers can exercise the powers available under the Equalities Act to appoint a person from a particular group, where there is a genuine occupational requirement. An example of a genuine occupational requirement would be appointing a female to work in a shelter for female victims of domestic violence.

### **5. Harassment**

Harassment can be defined as "improper, offensive and humiliating behaviour, practices or conduct, which may threaten a person's job security, create an intimidating, unwelcoming and stressful workplace, or cause personal offence or injury." (ACAS)

Harassment can often be identified by a series of what seem to be trivial incidents. It is the impression of the harassed person, not the intentions or motivations of the harasser, which are important.

Harassment applies to all protected characteristics (see below) except for pregnancy and maternity and marriage and civil partnership. Employees can complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception (see 1.2 above) and association (see 1.3 above).

## **6. Victimisation**

Victimisation is where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion because he/she is suspected of, or has:

- made, or supported, a complaint of discrimination;
- raised a grievance;
- brought proceedings under the Act; or
- done any other thing for the purposes of, or in connection with, the Act.

An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

## **Appendix B**

### **Equality and pay**

#### **Equal pay**

The Act provides that men and women should receive equal pay for equal work. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment. However, the Act allows a claim of direct pay discrimination to be made, even if no actual comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from the school if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work with the school. This would be a claim under sex discrimination.

#### **Pay secrecy**

The school will not prevent or restrict its employees from having discussions to establish if they believe pay differences exist that are related to a protected characteristic. The school may, in particular, require its employees to keep pay rates confidential outside the workplace e.g. a competitor organisation.

#### **Gender pay gap reporting**

The Government is introducing mandatory gender pay gap reporting for public sector employers with 250+ employees in April 2018.

The first publication of data is April 2018 but snapshot data must be collected on 5 April 2017. The data required is:

- mean and median hourly rates by gender;
- mean and median bonus payments (unclear what will constitute bonus pay) by gender;
- the proportions of each gender in each salary quartile.

## Appendix C

### The Protected Characteristics

#### Age

The Act protects people of all ages from unlawful discrimination.

Direct discrimination. Treating someone less favourably because of their actual or perceived age, or because of the age of someone with whom they associate. For example, advertising for job applicants under 25 years old only. This treatment can only be justified if it is a proportionate means of achieving a legitimate aim.

Indirect discrimination. This can occur where there is a provision, criteria or practice which applies to all employees, but particularly disadvantages people of a particular age. For example, a requirement for job applicants for a teaching post to have 5 years teaching experience may disadvantage younger people. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim, e.g. if the school can demonstrate this level of experience is necessary to achieve the desired knowledge and skills.

#### Disability

Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These include things like using a telephone, reading a book or using public transport. Long term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial. In most circumstances, a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability. Individuals who are HIV positive, have cancer or MS are automatically protected.

Employers must make reasonable adjustments in the recruitment and employment of disabled people. This can include, for example, adjustments to recruitment and selection procedures, to terms and conditions of employment, to working arrangements and physical changes to the premises or equipment. In assessing the reasonableness of the adjustment, the employer should consider:

- proportionality and impact of the adjustment on the role;
- the costs/financial support available;
- medical opinion from the employee's doctor and the occupational health advisor; and
- impact on the operational requirements of the school.

Direct discrimination. For example, not offering a job because someone is a wheelchair user.

Indirect discrimination. This is where a provision, criterion or practice is applied that is discriminatory in relation to individuals who have a particular disability such that it would be to the detriment of people who share that particular disability compared with people who do not, and it cannot be shown to be a proportionate means of achieving a legitimate aim.

Discrimination arising from disability - occurs where an individual has been treated unfavourably because of something arising in consequence of a disability. There is no need for a comparator, and the reason for the unfavourable treatment is irrelevant. For example, not considering a teacher for promotion as they have been diagnosed with depression without considering

whether the condition would actually impact on their ability to do the job and if it would, whether reasonable adjustments could be made to negate that impact.

This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know that the person has a disability.

There is an obligation on employers to make reasonable adjustments where a physical feature or a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with someone who does not have the protected characteristic or disability. The duty to make reasonable adjustments aims to make sure that a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

All the relevant individual circumstances must be considered when deciding what adjustments to make and the individual must be involved in discussions to ensure they are as effective as possible.

#### **Sharing health and absence information**

In accordance with the Act, employers may not request information concerning an individual's sickness and attendance record prior to the selection stage. Once the preferred candidate has been selected, then sickness and attendance records can be obtained from the referee and applicant, as part of the pre-employment checks prior to a firm offer. The applicant must give their explicit consent for this information to be released. The interview panel may not ask general questions about the individual's sickness and attendance record but may ask relevant questions to establish whether the applicant will be able to carry out a function that is intrinsic (e.g. majority of the work involves manual handling) to the work concerned once reasonable adjustments are in place.

#### **Gender reassignment**

Gender reassignment is a protected characteristic under the Act. This applies to people who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their gender by changing physiological or other attributes of sex. Gender reassignment is a personal process, that is moving away from one's birth sex to the preferred gender, rather than a medical process. The law does not require a person to undergo a medical procedure to be recognised under the protected characteristic of gender reassignment.

Protection is provided where, as part of the process of reassigning their gender, an individual lives in a gender identity, which is different to the gender they were assigned at birth, for at least two years. Throughout this period they are protected by the Act.

In order to be protected under the Act, there is no requirement for an employee to inform their employer of their gender reassignment status or their gender at birth. However, if an employee is proposing to undergo gender reassignment or is still in the process of transitioning, they may want to discuss their needs with their employer so the employer can support them during the process. Once a transgender person has received gender reassignment surgery and is fully living in the gender they identify with there is no requirement to inform an employer of their gender at birth.

Direct discrimination. This is treating someone less favourably than other employees because of their gender reassignment, whether actual or perceived, or because they associate with someone who intends to undergo, is undergoing or has undergone gender reassignment.

Indirect discrimination. An example would be where an employer starts an induction session for new staff with an ice-breaker designed to introduce everyone in the room to the others. Each employee is required to provide a picture of themselves as a toddler. One employee is a trans woman who does not wish her colleagues to know that she was brought up as a boy. When she does not bring in her photo, the employer criticises her in front of the group for not joining in. It would be no defence that it did not occur to the employer that this employee may feel disadvantaged by the requirement to disclose such information. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

## **Marriage and civil partnership**

The Act protects employees from discrimination on the grounds of being married or in a civil partnership.

Marriage covers any formal union of a man and woman which is legally recognised in the UK as a marriage. It also covers same sex couples who opt for a marriage. A civil partnership refers to a registered civil partnership under the Civil Partnership Act 2004, including those registered outside the UK. This is only open to same sex couples.

Only people who are married or in a civil partnership are protected against discrimination on this ground. The status of being unmarried or single is not protected. People who only intend to marry or form a civil partnership, or who have divorced or had their civil partnership dissolved, are not protected on this ground.

Direct Discrimination. This is where someone is treated less favourably than other employees on the grounds of them being married or in a civil partnership, actual or perceived, or because they are associated with a person who is married or in a civil partnership. An example of this could be where an applicant for a job is treated less favourably because it is considered that they will not be as committed to the job as a single person because they have marital or partnership commitments

Indirect Discrimination. This occurs if an employer has a policy or way of working that puts people who are married or in a civil partnership at a disadvantage.

## **Pregnancy and maternity**

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any maternity leave to which she is entitled. During this protected period, pregnancy and maternity discrimination cannot be treated as sex discrimination.

Direct discrimination covers the unfavourable treatment of a woman, during the "protected period" in relation to her pregnancy or any illness suffered by her as a result of that pregnancy. Unfavourable treatment during the protected period because a woman is on compulsory maternity leave or she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave, is also covered. An example could be where an employee has been off work because of pregnancy complications since early in her pregnancy. Her employer has dismissed her in accordance with the sickness absence management policy. This policy is applied regardless of sex. The dismissal is unfavourable treatment because of her pregnancy and would be unlawful even if a man would be dismissed for a similar period of sickness absence, because the employer took into account the employer's pregnancy related sickness absence in deciding to dismiss.

Discrimination on the grounds of pregnancy/maternity can only be justified if it is a proportionate means of achieving a legitimate aim. For example it would be legitimate to dismiss a pregnant employee who had been found to have committed an act of gross misconduct as the reason for the dismissal was unconnected to the pregnancy.

## **Race**

For the purposes of the Act, 'race' includes colour, nationality or ethnic or national origin. A person has the protected characteristic of race if they belong to a particular racial group. A racial group can be made up of two or more different racial groups (for example Black Britons).

Direct discrimination. Treating someone less favourably because of their actual. The less favourable treatment can also relate to the person's perceived race, even where the perception is wrong, or to the person's association with someone who has, or is perceived to have, the protected characteristic.

Indirect discrimination. This can occur where there is a provision, criterion or practice which applies to all employees, but particularly disadvantages people of a particular race. An example could be a requirement for all job applicants to have GCSE Maths and English. People educated in countries which don't have GCSE's would be discriminated against if equivalent qualifications were not accepted. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim.

## **Religion or belief**

In the Act, religion includes any form of religion which has a clear structure and belief system. It also includes a lack of religion - in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

Belief means any religious or philosophical belief and also covers non-belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Political beliefs are not protected.

A belief need not include faith or worship of a God but must affect how a person lives their life or perceives the world. A belief which is not a religious belief may be a philosophical belief. Examples of philosophical beliefs include Humanism and Atheism. For a philosophical belief to be protected under the Act:

- it must be genuinely held;
- it must be a belief and not an opinion or viewpoint based on the present state of information available;
- it must be a belief as to a weighty and substantial aspect of human life and behaviour;
- it must contain a certain level of cogency, seriousness, cohesion and importance;
- it must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

Direct discrimination. This is where, because of the protected characteristic of religion or belief, a person treats another person less favourably than that person treats or would treat other persons. The less favourable treatment can relate to the person's actual or perceived religion or belief, even where the perception is wrong, or to the person's association with someone who has, or is perceived to have, the protected characteristic.



Indirect discrimination. This can occur where there is a provision, criterion or practice which applies to all employees, but particularly disadvantages people of a particular religion or belief and which the employer cannot show to be a proportionate means of achieving a legitimate aim. An example would be where an employer announces that staff cannot wear their hair in dreadlocks, even if the locks are tied back. A policy amounts to a provision, criterion or practice. The decision to introduce the policy could be indirectly discriminatory because of religion or belief, as it puts Rastafarian employees at a particular disadvantage. The employer must show that the provision, criterion or practice can be objectively justified and is a proportionate means of achieving a legitimate aim.

## **Sex**

A person's sex refers to the fact that they are male and female.

Direct discrimination. Treating someone less favourably because of their actual or perceived sex, or because of the sex of someone with whom they associate.

Indirect discrimination. This can occur where there is a provision, criterion or practice that applies to all employees, but particularly disadvantages employees of a particular sex. For example, a requirement that job applicants must be six feet tall could be met by significantly fewer women than men.

## **Sexual orientation**

Sexual orientation is a protected characteristic. It means a person's sexual orientation towards:

- persons of the same sex (i.e. the person is a gay man or a lesbian);
- persons of the opposite sex (i.e. the person is straight/heterosexual); or
- persons of either sex (i.e. the person is bisexual)

Sexual orientation relates to how people feel as well as to their actions. Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation and it also covers discrimination connected with manifestations of that sexual orientation. These may include someone's appearance, the places they visit or the people they associate with. It also includes a perception that someone has a particular sexual orientation based on their appearance, regardless of whether they do or do not.

Direct discrimination. Treating someone less favourably because of their actual or perceived sexual orientation, or because of the sexual orientation of someone with whom they associate.

Indirect discrimination. This can occur where there is a provision, criterion or practice which applies to all employees, but particularly disadvantages people of a particular sexual orientation and which the employer cannot show to be a proportionate means of achieving a legitimate aim. An example would be a particular family friendly policy that does not apply to same sex couples.

## Appendix D

### Supporting organisations and documentation

#### **Equality and Human Rights Commission**

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. It provides guidance for employers and education providers.

<https://www.equalityhumanrights.com/en/advice-and-guidance> A detailed list of further sources of advice and information is available at Section 5 of the following guidance:

<https://www.equalityhumanrights.com/en/publication-download/good-equality-practice-employers-equality-policies-equality-training-and>

#### **Department for Education Non-statutory Advice**

Non-statutory Guidance is available from the Department for Education relating to the Equality Act in the following publication:

The Equality Act 2010 and schools. Departmental advice for school leaders, school staff, governing bodies and local authorities

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315587/Equality\\_Act\\_Advice\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf)

#### **Other organisations offering support and information:**

ACAS provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems, include detailed guidance on Equality and Diversity at Work.

<http://www.acas.org.uk/index.aspx?articleid=1363>

**Age** - <http://www.ageuk.org.uk/>

**Gender (sex)** - <http://www.fawcettsociety.org.uk/>

**Sexual orientation and gender identity** - <http://www.stonewall.org.uk>

#### **Disability**

For more information on disability you may be interested in looking at the following websites:

- Essex Coalition for Disabled People [www.ecdp.org.uk](http://www.ecdp.org.uk)
- ECL Sensory Team [www.eclsensoryservice.org](http://www.eclsensoryservice.org)
- Essex Sight [www.esexsight.org.uk](http://www.esexsight.org.uk)
- Support4sight [www.support4sight.org.uk](http://www.support4sight.org.uk)
- Deafblind UK [www.deafblind.org.uk](http://www.deafblind.org.uk)
- Hearing Help Essex [www.hearinghelpessex.org.uk](http://www.hearinghelpessex.org.uk)
- Disability Rights UK [www.disabilityrightsuk.uk](http://www.disabilityrightsuk.uk)
- Scope [www.scope.org.uk](http://www.scope.org.uk)
- MIND [www.mind.org.uk](http://www.mind.org.uk)

## **Appendix E**

### **Employment exceptions for schools with a religious character**

#### **Voluntary Aided Schools with a religious character**

##### **Teaching Staff**

The governing board may give preference with regard to the appointment, remuneration and promotion of teachers at the school, to persons:

- whose religious opinions are in accordance with the tenets of the school; or
- who attend religious worship in accordance with those tenets; or
- who give, or are willing to give, religious education at the school in accordance with those tenets.

The governing board may have regard, in connection with the termination of the employment of a teacher, to any conduct by which is incompatible with the precepts of, or with the upholding of the tenets of the school.

##### **Support staff**

Voluntary aided schools may discriminate on religious grounds where being of a particular religion or religious denomination is a genuine occupational requirement (GOR) (It must not be assumed that a 'blanket' approach to GOR can be applied to all support staff. The governing board must be able to demonstrate that it is reasonable and proportionate for an employee to be of a particular religion or belief for the job in question.

The governing board cannot apply religious criteria in connection with the employment of a member of the school's support staff who was in employment at the school on 1 September 2008, for as long as they continue to be employed at the school.

When considering whether a GOR might apply, governing bodies should consider the following issues:

- Do the duties for which the GOR is claimed represent a substantial part of the post and would the objectives of the job be achieved without the application of the faith requirement?
- Does the school have sufficient employees who could carry out the duties without undue inconvenience?

A GOR cannot be used to maintain a balance or quota of employees of a particular religion or belief.

The governing board should periodically consider whether the requirement continues to apply, particularly when recruiting, as jobs may change over time.

Religious criteria may not be applied to any other posts in a VA school unless there is a genuine occupational requirement (Employment Equality (Religion or Belief) Regulations 2003). This would need to be justified but might, for example, apply to a member of staff required to give pastoral care to pupils

## **Foundation and voluntary controlled schools with a religious character**

### **Headteachers**

When appointing a headteacher who is not to be reserved teacher, the governing board of a school with a religious character may have regard to that person's ability and fitness to preserve and develop the religious character of the school. The headteacher may also be a reserved teacher.

### **Reserved teachers**

Where the number of teachers at foundation and voluntary controlled schools with a religious character is more than two, the teachers shall include persons who are selected for their fitness and competence to teach religious education in accordance with the school's trust deed or with the tenets of the school and are specifically appointed to do so. These are known as 'reserved teachers'. The number of reserved teachers must not exceed one fifth of the total number of teachers including the head teacher. The headteacher can be selected on these grounds but must count towards the one fifth quota (s 58 of the School Standards and Framework Act 1998).

### **Other teachers and support staff**

Non-teaching staff and teachers other than those appointed as reserved teachers must not be treated unfavourably in any way because of their religious opinions or attendance at religious worship, they cannot be required to deliver RE and cannot be subjected to a detriment for not giving RE or attending worship.

## **Academies with a Religious Character**

Academies, free schools and independent schools with a religious character generally operate under conditions which mirror those in VA schools. Specific terms will be set out in the Funding Agreement/Articles.

### **Reference documents**

School Staffing Regulations 2009 (as amended)

The Equalities Act 2010 and Schools – Departmental advice May 2014

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